IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

MISC.CIVIL APPLICATION NO.48 OF 2006

Sonali @ Soni Rajendra Mutha .. Applicant

versus

Rajendra Shantilal Mutha .. Respondent

...

Mr.M.V. Limaye for the applicant.

Mrs.Indira Reddy for the respondent.

CORAM : D.G. KARNIK, J

DATED : 7th December 2006

P.C.:

1. Heard counsel for the parties.

2. This petition under section 24 of the Code of Civil Procedure is filed by the petitioner wife for transfer of Misc. Application no.16 of 2006 from the court of District Judge at Ahmednagar to the Family Court at Pune.

3. The marriage between petitioner and respondent took place at Pune on 4th February 1999. A son was born out of the marriage and the son is in custody of the petitioner. It appears that thereafter couple separated and the respondent filed Marriage Petition no.226 of 2006 before the Family Court at Pune for divorce. The applicant also filed Application no.25 of 2006 before the Family Court at Pune under the Hindu Adoption and Maintenance Act for maintenance. While the aforesaid proceedings were pending, the respondent husband filed an application bearing Misc. Application no.16 of 2006 for custody of the minor son in the District Court at Ahmednagar. By this petition, petitioner prays for transfer of the said petition from the court at Ahmednagar to the Family Court at Pune.

4. The petitioner is residing at Pune. The respondent has also filed the Marriage Petition at Pune. The application by the respondent for custody of the minor son at Ahmednagar appears to be to drag the petitioner from Pune to Ahmednagar. The petitioner has stated that she stays at Pune. The minor son also stays at Pune. The petitioner cannot travel from Pune to Ahmednagar along with the minor son.

5. In Neelam Saxena Vs.Navinder Singh reported in 2005 (12) SCC 366 and Nilakshi Mujumdas Vs. Gautam Ram prasad Majumdar reported in 2005(12) SCC 175, the Supreme Court has allowed transfer of the proceedings at the instance of the wife on the ground that it is difficult for her to travel along with the small child/children. The present case is covered by the said decisions. In the circumstances, petition deserved to be allowed.

6. Petition is accordingly allowed in terms of prayer clause (a).

(D.G. KARNIK, J)